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No. 84-1822

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

LEONARD J. KERPELMAN,

Petitioner,

v.

MARVIN LAND, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Did the District Court and Circuit Court properly hold that Respondents are entitled to judicial and quasi-judicial immunity from Petitioner's claim for damages, and that Petitioner failed to state a valid claim for injunctive relief, thereby warranting dismissal of Petitioner's 42 U.S.C. §1983 action?

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IN THE

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October Term, 1984

LEONARD J. KERPELMAN

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v.

MARVIN LAND, et al.

Respondents

On Petition for Writ of Certiorari
To the United States Court of
Appeals for the Fourth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COUNTERSTATEMENT OF THE CASE

Petitioner Leonard J. Kerpelman (hereinafter "Kerpelman"), an attorney currently serving a disciplinary suspension from the

practice of law in the State of Maryland, filed a 42 U.S.C. §1983 civil action against five "groups" of defendants in U.S. District Court for the District of Maryland on October 14, 1983.

In his complaint, Kerpelman contended that defendants conspired to file and pursue "a false and entirely frivolous charge of professional misconduct" against him. Prior to Kerpelman's suit, the misconduct charge at issue had been unanimously dismissed by an Inquiry Panel of the Attorney Grievance Commission of Maryland at a preliminary stage without a hearing, and no sanction was sought or imposed. See Maryland Rules BV5 and BV6, reproduced in Pet. App. at 50-55, outlining procedures before the Attorney Grievance Commission. Nevertheless, in his §1983 complaint Kerpelman demanded damages and an injunction against possible future action

which the Attorney Grievance Commission might take against him.

Defendant Marvin Land, a former Circuit Court Judge for Baltimore County, Maryland and a Respondent before this Court, moved to dismiss Kerpelman's §1983 complaint on the basis of judicial immunity. The other Respondents before this Court - the present Bar Counsel of the Attorney Grievance Commission of Maryland, former Assistant Bar Counsel, and present or former members and employees of the Attorney Grievance Commission - moved to dismiss Kerpelman's §1983 complaint for a variety of reasons, including quasi-judicial immunity.

In a lengthy Memorandum opinion filed on April 17, 1984, the Honorable Joseph H. Young of the District Court dismissed Kerpelman's claims for damages on grounds of judicial and quasi-judicial immunity. The District Court also dismissed Kerpelman's claim for injunc-

tive relief for failure to state a claim upon which relief may be granted. Pet. App. at A8-A30. In an unpublished Opinion dated January 24, 1985, the Court of Appeals for the Fourth Circuit affirmed on the basis of the District Court's opinion, noting additionally that Kerpelman's conclusory allegations of a conspiracy were insufficient to maintain his claim. Pet. App. A1-A3. By Order dated February 20, 1985, the Court of Appeals denied Kerpelman's petition for rehearing en banc. Pet. App. A4-A5.

REASONS FOR DENYING THE WRIT

1. The Trial and Appellate Courts Fully Considered and Correctly Decided the Question Presented.

After thorough analysis, the District Court correctly determined that Respondent Land's initiation of the grievance complaint against Kerpelman was a judicial act subject

to judicial immunity from claims for damages. Stump v. Sparkman, 435 U.S. 349 (1978).

The District Court also properly found that the remaining Respondents before this Court, all of whom are present or former members or employees of the Attorney Grievance Commission of Maryland, are entitled to quasi-judicial absolute immunity from claims for damages as the arm of the judiciary charged with regulating attorney conduct in Maryland. Pet. App. A17-A25. See Butz v. Economou, 438 U.S. 478 (1978). The District Court's decision on this point was in part based upon several Court of Appeals decisions granting absolute immunity to attorney disciplinary commissions and their agents who investigate and prosecute complaints of misconduct of attorneys. On appeal, the Fourth Circuit concurred with the District Court's conclusion and reasoning.

The trial and appellate courts also properly held that Kerpelman's complaint failed to state a valid claim for injunctive relief, because his conclusory allegations were insufficient. Pet. App. A3, A10. Indeed, dismissal of Kerpelman's injunction claim was entirely proper, since he cannot show a real and immediate threat of future injury by Respondents, a necessary prerequisite to stating a claim for injunctive relief. City of Los Angeles v. Lyons, 461 U.S. 95, 103 S.Ct. 1660, 1668 at n. 8 (1983).

The lower courts also correctly noted that Kerpelman's prayer for injunctive relief with regard to possible future investigations of him by the Attorney Grievance Commission would interfere with the principles of federal-state comity set forth in Younger v. Harris, 401 U.S. 37 (1971), and Middlesex Ethics Comm. v. Garden State Bar Ass'n., 457 U.S. 423 (1982). Accordingly, Kerpelman's

claim for injunctive relief was properly dismissed.

In his Petition for Writ of Certiorari, as he did in briefing before the Fourth Circuit, Kerpelman suggests that dismissal of his request for injunctive relief somehow contradicts the decision in Pulliam v. Allen, _____ U.S. _____, 104 S.Ct. 1970 (1984). In Pulliam, this Court held that the doctrine of judicial immunity does not bar a §1983 action seeking injunctive relief and attorneys' fees.

Had the District Court in this case dismissed Kerpelman's request for injunctive relief on immunity grounds, Pulliam might compel a remand. However, this did not occur. Ratner, Kerpelman's claim for injunction and attorneys' fees was dismissed for failure to state a claim upon which relief could be granted. Accordingly, Pulliam has

no application to this case, and Kerpelman's reliance upon Pulliam is wholly misplaced.

2. The Question Presented Is Particularly Fact-Specific and Not Important Enough to Warrant Review.

Kerpelman's continual dispute with the Attorney Grievance Commission of Maryland is admittedly "unique." Pet. at 49. The District Court's ruling, as affirmed by the Court of Appeals, is fact-specific and necessarily rooted to the peculiar allegations set forth by Kerpelman in his complaint. Moreover, Kerpelman's unusual complaint does not present a substantial federal question worthy of this Court's review, because the charge of misconduct at issue was dismissed by an Inquiry Panel of the Attorney Grievance Commission prior to Kerpelman's lawsuit and without a hearing or imposition of any penalty. Under these circumstances, this Court should decline further review of the matter.

3. The Second and Third Questions Raised in the Petition Are Not Properly Before the Court.

In his Petition, Kerpelman apparently seeks this Court's consideration of questions dealing with "repression of Free Speech" and alleged selective prosecution of certain groups by the Attorney Grievance Commission. Pet. at IV. Because these questions were not presented to the lower courts for consideration, review of these issues by the Court would be inappropriate.

CONCLUSION

Respondents respectfully urge the Court to decline to review this case by the issuance of a Writ of Certiorari. The question raised by the Petition was correctly decided at both the trial and appellate levels, and is not an issue worthy of further consideration by this Court. The additional questions

presented by the Petitioner are not properly before the Court.

Respectfully submitted,

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